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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3733 OF 2003
IN
SUIT NO.286 OF 1981

Jamshed Kawasjee Vakeel and another)..Plaintiffs

Versus

Bennett Coleman & Company Ltd. & ors.)..Defendants

Mr.Devansh A. Mehta i/b.Vinod Juwale for the Plaintiffs.

Mr.S.Parikh with Mr.C.D. Patel i/b.M/s.Kanga & Co. for Defendant Nos.1 and 4.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 7TH AUGUST 2006

P.C.:

. The Suit has been filed by two Plaintiffs. The second Plaintiff has been wound up admittedly. According to the learned Counsel for the Plaintiffs, the Liquidator has informed the first Plaintiff that he is not in a position to prosecute the Suit on behalf of the second Plaintiff Company as he is out of funds.

2. The learned Counsel for the Defendants states that Defendant Nos.2 and 3 have expired and, therefore, the Motion against them does not survive. He also points out that the Motion which is filed by the second Plaintiff is not maintainable since it is in

liquidation.

3. The learned Counsel appearing for the Plaintiffs points out the judgment in the case of *Vijay Mines and Minerals* vs. *The Director of Industries and Commerce*, **Madras, AIR 1995 MADRAS 370**, of the Madras High Court to submit that an interim application taken out by either one of the Plaintiffs is maintainable.

4. In my view, the Madras High Court has considered the issue raised by the learned Counsel for the Plaintiffs and I am in respectful agreement with the view taken by the Madras High Court. Hence, it is held that the Motion filed by the first Plaintiff is maintainable.

5. Several reasons have been stated in the affidavit in support of the Motion for restoring the Suit on record. It is contended that the first Plaintiff was required to leave India on the day prior to the date on which the Suit was to be heard. Photo copies of the passport, which is annexed to the affidavit, indicate that the first Plaintiff was out of India on the relevant day.

6. In my view, sufficient cause has been made out by the first Plaintiff for restoring the Suit.

7. Hence, Suit restored to file.

8. However, a further prayer is made by the Plaintiffs that the Bank Guarantee which had been furnished by Defendant No.1 pursuant to interim orders should be revived. This is a prayer which the Plaintiffs can seek by filing an appropriate application once the Suit is restored.

9. The learned Counsel for the first Plaintiff, on instructions from the first Plaintiff, who is present in Court, deletes Defendant Nos.2 and 3 who are no longer alive, from the Motion and the Suit.

10. Motion disposed off accordingly.